



BILLING CODE 9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2022-0199]**

**RIN 1625-AA11**

**Regulated Navigation Area; Environmental Protection Agency Superfund Site,  
Point Ruston, Commencement Bay, Tacoma, WA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a permanent regulated navigation area (RNA) for all navigable waters within the area of lines drawn from Dune Park downward to the Point Ruston Historic Ferry dock on Commencement Bay, WA. This RNA is necessary to preserve the integrity of protective sediment caps placed in multiple areas within this waterway as part of the remediation process at the Commencement Bay, Nearshore/Tideflats Environmental Protection Agency (EPA) Superfund Cleanup site. This RNA would prohibit activities which would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the sediment cap, unless authorized by the Captain of the Port (COTP) Puget Sound or their Designated Representative. The RNA would not affect the transit or navigation within this waterway. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2022-0199 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Rob Nakama, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206-217-6089, email [SectorPugetSoundWWM@uscg.mil](mailto:SectorPugetSoundWWM@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
RNA	Regulated Navigation Area
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On December 6, 2021, the United States Environmental Protection Agency Region 10 notified the Coast Guard that it requests the establishment of an RNA or “No Anchor Zone” for commercial vehicles within the Operable Unit 6 (OU6) Asarco sediment cap in the Commencement Bay Nearshore/Tideflat (CB-NT) Superfund site. This RNA would prohibit activities that could disrupt the integrity of the engineered

sediment caps that have been placed within the OU6 Asarco sediment cap. These activities include vessel grounding, anchoring, dragging, trawling, spudding or other such activities that would disturb the integrity of the sediment caps.

The purpose of this rulemaking is to prevent disruption of the sediment caps which may result in hazardous conditions and harm to the marine environment. As such, this RNA is necessary to help ensure the sediment cap is protected and will do so by prohibiting maritime activities that could disturb or damage it.

The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70011 and 70034. The Secretary of the Department of Homeland Security (DHS) delegated these statutory authorities to the Coast Guard through DHS Delegation No. 00170.1(70), Revision No. 01.2. Section 46 U.S.C. 70011 generally authorizes the Coast Guard to take such action as is necessary to protect the navigable waters and the resources therein from harm resulting from vessel or structure damage, destruction, or loss. Section 70034 authorizes the Coast Guard to issue regulations that are necessary to implement 46 U.S.C. Chapter 700.

### **III. Discussion of Proposed Rule**

The Coast Guard is proposing to establish a permanent regulation restricting activities such as anchoring, dragging, trawling, or other activities that involve disrupting the integrity of sediment caps located within the Commencement Bay Nearshore/Tideflat, WA. Activities common in the proposed regulated areas include tugboat and log-rafting activities, tugboat moorage, removal and launching of boats for repair and other maintenance activities. The thick-layer cap areas were designed to be compatible with the activities described above that are associated with a working waterfront. The material

used for the cap was chosen to be able to contain underlying sediments without altering the main activities of the working waterways. No vessel or person would be permitted to perform the aforementioned activities without obtaining permission from the Captain of the Port, Puget Sound (COTP) or a designated representative.

The RNA would include all waters within Dune Park downward to the Point Ruston Historic Ferry dock on Commencement Bay, WA, encompassed by a line connecting the following points beginning at 47°18'12.0" N, 122°30'26.0" W onshore, thence 240 feet to position 47°18'13.0" N 122°30'22.0" W offshore, thence 2,900 feet to position 47°17'52.0" N, 122°29'53.0" W offshore, thence 500 feet to position 47°17'49.0" N 122°29'59.0" W onshore. These coordinates are based on World Geodetic System (WGS 84).

The prohibition for anchoring, dragging, trawling, or other activities that involve disrupting the integrity of sediment caps would not apply to vessels or persons engaged in activities associated with remediation efforts in the Commencement Bay Nearshore/Tideflat (CB-NT) Superfund sites, provided that the COTP is given advance notice of those activities by the EPA. Vessels may otherwise transit or navigate within this area without reservation.

#### **IV. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the fact that the RNA is limited in size and will not limit vessels from transiting or using the waters covered, except for specified activities that may damage the engineered sediment cap.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the RNA may be small entities, for the reasons stated in section IV.A above, this rule will not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act

of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a permanent regulated navigation area for all navigable waters within the area of lines drawn from Dune Park downward to the Point Ruston Historic Ferry dock on Commencement Bay, WA. This rule prohibits activities that would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the sediment caps installed in the designated regulated navigation area, pursuant to the remediation efforts of the U.S. Environmental Protection Agency (EPA) and other participants in the EPA superfund cleanup site. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A

preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

#### *A. Submitting comments.*

We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG- 2022-0199 in the search box and click "Search." Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed

rule for alternate instructions.

*B. Viewing material in docket.*

To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*C. Personal information.*

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

**PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS  
AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.1344 to read as follows:

**§ 165.1344 Regulated Navigation Area; Commencement Bay**

**Nearshore/Tideflat Superfund Site, Commencement Bay, Tacoma, WA.**

- (a) Regulated Areas. The following area is a regulated navigation area (RNA):

All waters within Dune Park downward to the Point Ruston Historic Ferry dock on Commencement Bay, WA, encompassed by a line connecting the following points beginning at 47°18'12.0" N, 122°30'26.0" W onshore, thence 240 feet to position 47°18'13.0" N 122°30'22.0" W offshore, thence 2,900 feet to position 47°17'52.0" N, 122°29'53.0" W offshore, thence 500 feet to position 47°17'49.0" N 122°29'59.0" W onshore. These coordinates are based on World Geodetic System (WGS 84).

- (b) Regulations. In addition to the general RNA regulations in § 165.13, the following regulations apply to the RNA described in paragraph (a) of this section.

- (1) Prohibited activities include those that would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the sediment caps installed in the designated regulated navigation area, pursuant to the remediation efforts of the U.S. Environmental Protection Agency (EPA) and other participants in the EPA superfund cleanup site. Vessels may otherwise transit or navigate within this area without reservation.

(2) The prohibition described in this section does not apply to vessels or persons engaged in activities associated with remediation efforts in the Middle Waterway superfund sites, provided that the Captain of the Port (COTP) Puget Sound is given advance notice of those activities by the EPA.

**M.W. Bouboulis,**

*Rear Admiral, U.S. Coast Guard,*

*Commander, 13<sup>th</sup> U.S. Coast Guard District.*

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